

Senate File 313 - Introduced

SENATE FILE _____
BY BOLKCOM

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer protection in specified home loans
2 and the responsibilities of mortgage bankers and mortgage
3 brokers in connection with such home loans.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2528XS 82
6 rn/gg/14

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1 1 DIVISION I
1 2 CONSUMER PROTECTIONS IN CERTAIN HOME LOANS
1 3 Section 1. NEW SECTION. 714C.1 DEFINITIONS.
1 4 As used in this chapter, unless the context otherwise
1 5 requires:
1 6 1. "Consumer home loan" means a loan, including a home
1 7 equity line of credit as defined in section 535.10, in which
1 8 the borrower is a natural person, the loan proceeds are to be
1 9 used primarily for personal, family, or household purposes,
1 10 and the loan is secured by a mortgage or deed of trust upon
1 11 residential real property as defined in section 535B.1.
1 12 Consumer home loan includes a loan used to purchase
1 13 residential real property and a refinancing of an existing
1 14 consumer home loan, but specifically excludes reverse mortgage
1 15 transactions.
1 16 2. "Flipping" or "churning" means making a consumer home
1 17 loan to a borrower which refinances an existing consumer home
1 18 loan when the new loan has no reasonable, net tangible benefit
1 19 to the borrower considering all of the circumstances,
1 20 including the terms of both the new and refinanced loans, the
1 21 total cost of the new loan, and the borrower's circumstances.
1 22 3. "Lender" means a person who makes a loan.
1 23 4. "Mortgage banker" means the same as defined in section
1 24 535B.1, and includes natural persons required to be registered
1 25 under section 535B.4A.
1 26 5. "Mortgage broker" means the same as defined in section
1 27 535B.1, and includes natural persons required to be registered
1 28 under section 535B.4A.
1 29 6. "Person" means the same as defined in section 535B.1.
1 30 7. "Reverse mortgage transaction" means a loan for a
1 31 definite or indefinite term secured by a first mortgage or
1 32 first deed of trust on the principal residence of the
1 33 mortgagor located in Iowa, the proceeds of which are disbursed
1 34 to the mortgagor in one or more lump sums, or in equal or
1 35 unequal installments, either directly by the lender or the
2 1 lender's agent, and that requires no repayment until a future
2 2 time, upon the earliest occurrence of one or more events
2 3 specified in the reverse mortgage loan contract such as the
2 4 sale of the property or the death of the borrower.
2 5 Sec. 2. NEW SECTION. 714C.2 CONSUMER PROTECTIONS.
2 6 In any consumer home loan, a lender, mortgage banker, or
2 7 mortgage broker, shall not:
2 8 1. Finance, directly or indirectly, any credit life,
2 9 disability, or unemployment insurance, or any other life or
2 10 health insurance premiums. Insurance premiums calculated and
2 11 paid on a monthly basis shall not be considered financed by
2 12 the lender, mortgage banker, or mortgage broker.
2 13 2. Knowingly engage in the act or practice of "flipping"
2 14 or "churning" a consumer home loan.
2 15 3. Recommend or encourage default on an existing loan or
2 16 other debt prior to and in connection with the closing or
2 17 planned closing of a consumer home loan that refinances all or
2 18 any portion of such existing loan or debt.
2 19 4. Advertise mortgage loans, including rates, margins,

2 20 discount points, fees, commissions, or other material
2 21 information, including material limitations on the loans,
2 22 unless the lender, mortgage banker, or mortgage broker is able
2 23 to make the advertised mortgage loans available to a
2 24 reasonable number of qualified applicants.

2 25 5. Represent to a borrower, in connection with the closing
2 26 or planned closing of a consumer home loan, that the lender,
2 27 mortgage banker, or mortgage broker will be able to refinance
2 28 the loan at a later date on more favorable terms unless the
2 29 lender, mortgage banker, or mortgage broker provides the
2 30 borrower in writing a statement that the lender, mortgage
2 31 banker, or mortgage broker is contractually bound to refinance
2 32 the loan at a later date and specifies the more favorable
2 33 terms.

2 34 6. Misrepresent to a borrower the borrower's credit rating
2 35 or credit status.

3 1 7. Misrepresent, inflate, or fabricate, or encourage a
3 2 borrower to misrepresent, inflate, or fabricate, the source or
3 3 amount of a borrower's actual income or assets in the
3 4 application or underwriting process of a consumer home loan.

3 5 8. Underwrite or close a consumer home loan if any portion
3 6 of a borrower's income or assets used to underwrite or close
3 7 the loan is not verified through documentation and the amount
3 8 of income claimed is not reasonable for the occupation and
3 9 experience claimed. If the borrower's income is based in
3 10 whole or in part on self-employment or a home-based business,
3 11 the lender, mortgage banker, or mortgage broker shall receive
3 12 and review evidence and confirm the existence of the
3 13 self-employment or business before using that income to
3 14 underwrite any portion of the consumer home loan.

3 15 9. Impose any fee upon a borrower in connection with a
3 16 consumer home loan application that fails to close. This
3 17 prohibition applies regardless of how the fee is described,
3 18 including but not limited to as an origination fee,
3 19 application fee, mortgage broker fee, yield spread premium,
3 20 processing fee, underwriting fee, or other description.

3 21 10. Misrepresent or conceal material facts or make false
3 22 promises likely to influence, persuade, or induce a borrower
3 23 to enter into a consumer home loan.

3 24 11. Fail to disburse funds in accordance with a written
3 25 commitment or agreement to make a consumer home loan.

3 26 12. Engage in any transaction, practice, or course of
3 27 business in connection with a consumer home loan that is not
3 28 in good faith or fair dealing or that constitutes a fraud upon
3 29 any person.

3 30 13. Make, provide, or arrange for a consumer home loan
3 31 without verifying the borrower's reasonable ability to repay
3 32 the loan being offered. In determining reasonable ability to
3 33 repay, a lender, mortgage banker, or mortgage broker shall
3 34 consider but not be limited to the borrower's income, current
3 35 financial obligations, employment status, and other financial
4 1 resources. A lender, mortgage banker, or mortgage broker
4 2 shall not consider only the borrower's equity in the principal
4 3 dwelling that would secure the consumer home loan in
4 4 determining ability to repay. For loans in which the interest
4 5 rate may vary, the reasonable ability to repay shall be
4 6 determined based on the maximum monthly payment that could be
4 7 due during the first five years of the loan term, which must
4 8 be calculated according to the maximum interest rate allowable
4 9 under the loan, assuming no default by the borrower and
4 10 assuming a fully indexed rate and a repayment schedule which
4 11 achieves full amortization over the life of the loan.

4 12 Sec. 3. NEW SECTION. 714C.3 WAIVER PROHIBITED.
4 13 The terms of this chapter cannot be waived or modified by
4 14 contract or otherwise.

4 15 Sec. 4. NEW SECTION. 714C.4 EXEMPTION.
4 16 The provisions of this chapter shall not apply to federally
4 17 insured depository institutions.

4 18 Sec. 5. NEW SECTION. 714C.5 REMEDIES.

4 19 1. A violation of this chapter is an unlawful practice
4 20 pursuant to section 714.16, subsection 2, paragraph "a".

4 21 2. A borrower who suffers damage or injury as the result
4 22 of a practice which violates this chapter may bring an action
4 23 at law to recover actual damages. The court may order such
4 24 equitable relief as it deems necessary to protect the public
4 25 from further violations, including temporary and permanent
4 26 injunctive relief. In an action in which it is found that a
4 27 person has violated this chapter, the court shall award to the
4 28 borrower the costs of the action and to the borrower's
4 29 attorneys their reasonable fees. Reasonable attorney fees
4 30 shall be determined by the value of the time reasonably

4 31 expended by the attorney and not by the amount of the recovery
4 32 on behalf of the borrower. If the finder of fact finds that a
4 33 practice declared to violate this chapter is willful, in
4 34 addition to an award of actual damages, statutory damages of
4 35 up to three times the amount of actual damages may be awarded
5 1 to a prevailing borrower. Any claim under this chapter shall
5 2 be required to be proved by a preponderance of the evidence.
5 3 Sec. 6. NEW SECTION. 714C.6 APPLICABILITY OF OTHER LAW.
5 4 This chapter establishes specific consumer protections in
5 5 consumer home loans that are in addition to other consumer
5 6 protections that may be otherwise available under state or
5 7 federal law.
5 8 Sec. 7. NEW SECTION. 535B.12A APPLICABILITY OF OTHER
5 9 LAW.
5 10 A violation of chapter 714C is a violation of this chapter.
5 11 Sec. 8. NEW SECTION. 536.19A APPLICABILITY OF OTHER LAW.
5 12 A violation of chapter 714C is a violation of this chapter.
5 13 Sec. 9. NEW SECTION. 536A.27A APPLICABILITY OF OTHER
5 14 LAW.
5 15 A violation of chapter 714C is a violation of this chapter.
5 16 DIVISION II
5 17 ADDITIONAL RESPONSIBILITIES OF
5 18 MORTGAGE BANKERS AND MORTGAGE BROKERS
5 19 Sec. 10. NEW SECTION. 535B.4B MORTGAGE BANKER AND
5 20 MORTGAGE BROKER DUTIES.
5 21 1. A mortgage banker or mortgage broker, including a
5 22 natural person required to be registered under section
5 23 535B.4A, in addition to other duties imposed by other statutes
5 24 or at common law, shall:
5 25 a. Act in good faith and with fair dealing in any
5 26 transaction, practice, or course of business in connection
5 27 with a mortgage loan on residential real property.
5 28 b. Safeguard and account for any money handled for the
5 29 borrower.
5 30 c. Follow reasonable and lawful instructions from the
5 31 borrower.
5 32 d. Act with reasonable skill, care, competence, and
5 33 diligence.
5 34 e. Affirmatively disclose facts, without prompting or
5 35 questions from the borrower, which are or should be within the
6 1 mortgage banker's or mortgage broker's knowledge which
6 2 materially affect the borrower's rights and interests.
6 3 2. In addition to the requirements of subsection 1 and
6 4 other duties imposed by other statutes or at common law, a
6 5 mortgage broker, including a natural person required to be
6 6 registered under section 535B.4A, shall:
6 7 a. Make reasonable efforts, with lenders with whom the
6 8 broker regularly does business, to secure a loan that is
6 9 reasonably advantageous to the borrower considering all of the
6 10 circumstances, including the rates, charges, and repayment
6 11 terms of the loan or loans, and the loan options for which the
6 12 borrower qualifies with such lenders.
6 13 b. Place the borrower in a loan based on the best
6 14 interests of the borrower and not the best interests of the
6 15 mortgage broker.
6 16 3. The duties and standards of care established in this
6 17 section cannot be waived or modified by contract or otherwise.
6 18 4. A borrower who suffers damage or injury as the result
6 19 of a practice which violates this section may bring an action
6 20 at law to recover an amount equal to the greater of the
6 21 borrower's actual damages or the sum of all monetary
6 22 compensation paid directly or indirectly to a mortgage banker
6 23 or mortgage broker from any source for the loan at issue. The
6 24 court may order such equitable relief as it deems necessary to
6 25 protect the public from further violations, including
6 26 temporary and permanent injunctive relief. In an action in
6 27 which it is found that a person has violated this section, the
6 28 court shall award to the borrower the costs of the action and
6 29 to the borrower's attorneys their reasonable fees. Reasonable
6 30 attorney fees shall be determined by the value of the time
6 31 reasonably expended by the attorney and not by the amount of
6 32 the recovery on behalf of the borrower. If the finder of fact
6 33 finds that a practice declared to violate this section is
6 34 willful, in addition to an award of actual damages or return
6 35 of monetary compensation, statutory damages of up to three
7 1 times the amount of that sum may be awarded to a prevailing
7 2 borrower. Any claim under this section shall be required to
7 3 be proved by a preponderance of the evidence.
7 4 5. A violation of this section is an unlawful practice
7 5 pursuant to section 714.16, subsection 2, paragraph "a".
7 6 Sec. 11. Section 536.12, Code 2007, is amended by adding

7 7 the following new unnumbered paragraph:
7 8 NEW UNNUMBERED PARAGRAPH. No licensee shall agree to
7 9 obtain or arrange a residential mortgage loan for a potential
7 10 borrower from a third person, unless the licensee also has a
7 11 mortgage broker license under the provisions of chapter 535B
7 12 and complies with all provisions of chapter 535B.

7 13 Sec. 12. Section 536A.23, subsection 1, Code 2007, is
7 14 amended by adding the following new paragraph:

7 15 NEW PARAGRAPH. e. Agree to obtain or arrange a
7 16 residential mortgage loan for a potential borrower from a
7 17 third person, unless the industrial loan company also has a
7 18 mortgage broker license and complies with all provisions of
7 19 chapter 535B.

7 20 DIVISION III

7 21 DISCOUNT POINTS IN RESIDENTIAL

7 22 MORTGAGE LOANS INVOLVING YIELD SPREAD PREMIUMS

7 23 Sec. 13. Section 535.8, subsection 3, Code 2007, is
7 24 amended to read as follows:

7 25 3. a. As used in this subsection, unless the context
7 26 otherwise requires:

7 27 (1) "Discount point" or "interest reduction fee" means a
7 28 fee that is paid by a borrower at the closing of the loan to
7 29 buy down or reduce the interest rate on the loan.

7 30 (2) "Par rate" means the interest rate on a loan if the
7 31 borrower pays zero discount points.

7 32 (3) "Yield spread premium" means an interest rate that is
7 33 above the par rate for which the borrower qualified and said
7 34 difference in the interest rate is paid, in whole or in part,
7 35 to any party other than the lender funding the loan.

8 1 b. A lender who offers to make a loan with only those fees
8 2 authorized by subsection 2 may also offer in exchange for the
8 3 payment of an interest reduction fee or discount points to
8 4 make a loan on all of the same terms except at a lower
8 5 interest rate and with the lower payments resulting from the
8 6 lower interest rate. Prior to accepting an application for a
8 7 loan which includes a payment an interest reduction fee or
8 8 discount points, the lender shall provide the potential
8 9 borrower with a written disclosure describing in plain
8 10 language the specific terms which the loan would have both
8 11 with the payment interest reduction fee or discount points and
8 12 without it such fee or points. This disclosure shall include
8 13 a good faith example showing the amount of the payment
8 14 interest reduction fee or discount points and the reduction in
8 15 payments which would result from the payment of this fee or
8 16 discount points in a typical loan transaction. A payment An
8 17 interest reduction fee which complies or discount points that
8 18 comply with this subsection paragraph may be collected in
8 19 connection with a loan in addition to the fees authorized by
8 20 subsection 2.

8 21 c. A person shall not seek, accept, offer, or provide a
8 22 yield spread premium on any loan that includes the payment of
8 23 discount points or an interest reduction fee.

8 24 d. A borrower may recover the sum of the yield spread
8 25 premium in an action against any person who violated paragraph
8 26 "c". The court may order equitable relief it deems necessary
8 27 to protect the public from further violations, including
8 28 temporary and permanent injunctive relief. In an action in
8 29 which it is found that a person has violated this subsection,
8 30 the court shall award to the borrower the costs of the action
8 31 and to the borrower's attorneys their reasonable fees.

8 32 Reasonable attorney fees shall be determined by the value of
8 33 the time reasonably expended by the attorney and not by the
8 34 amount of the recovery on behalf of the borrower. If the
8 35 finder of fact finds that a practice declared to violate this
9 1 subsection is willful, in addition to recovery of the unlawful
9 2 fee or charge, statutory damages of up to three times the
9 3 amount of the unlawful fee or charge may be awarded to a
9 4 prevailing borrower. Any claim under this subsection shall be
9 5 required to be proved by a preponderance of the evidence.

9 6 e. A violation of this subsection is an unlawful practice
9 7 pursuant to section 714.16, subsection 2, paragraph "a".

9 8 DIVISION IV

9 9 MORTGAGE LENDING FRAUD PROSECUTION FUND

9 10 Sec. 14. NEW SECTION. 714.16C MORTGAGE LENDING FRAUD
9 11 PROSECUTION == SURCHARGE == FUND ESTABLISHED.

9 12 1. Except as provided in subsection 2, a surcharge of one
9 13 dollar shall be charged by the county recorder at the time of
9 14 recording each mortgage or deed of trust as required pursuant
9 15 to section 558.13, which is in addition to any other charge
9 16 authorized by law. The recorder may retain up to five percent
9 17 of the funds collected to administer collection. The

9 18 remaining funds shall be transmitted monthly to the treasurer
9 19 of state who shall deposit the funds into the mortgage lending
9 20 fraud prosecution fund created in section 2. The surcharge
9 21 imposed in this section does not apply to assignments or
9 22 substitutions of previously recorded mortgages or deeds of
9 23 trust.
9 24 2. A mortgage lending fraud prosecution fund is created as
9 25 a separate fund in the state treasury to be administered by
9 26 the attorney general for the investigation and prosecution of
9 27 frauds related to mortgage lending. The fund shall contain
9 28 amounts deposited monthly by the treasurer of state from the
9 29 surcharge charged at the time of recording of each mortgage or
9 30 deed of trust pursuant to subsection 1. Notwithstanding
9 31 section 8.33, any balance in the fund on June 30 of any fiscal
9 32 year shall not revert to the general fund of the state.
9 33

9 34 EXPLANATION

9 35 This bill establishes consumer protection measures in
10 1 relation to certain home loans, and establishes additional
10 2 related requirements applicable to mortgage bankers and
10 3 mortgage brokers.

10 4 The bill additionally places restrictions on a mortgage
10 5 banker or mortgage broker relating to a consumer home loan
10 6 transaction, which the bill specifies includes both a loan
10 7 used to purchase residential real property and a refinancing
10 8 of an existing consumer home loan but specifically excludes
10 9 reverse mortgage transactions. The bill provides that a
10 10 mortgage banker or broker shall not finance, directly or
10 11 indirectly, any credit life, disability, or unemployment
10 12 insurance, or any other life or health insurance premiums; or
10 13 knowingly engage in the act or practice of "flipping" or
10 14 "churning" a consumer home loan, which the bill defines as
10 15 making a consumer home loan to a borrower which refinances an
10 16 existing consumer home loan when the new loan has no
10 17 reasonable, net tangible benefit to the borrower considering
10 18 all of the circumstances.

10 19 The bill provides that a mortgage broker or banker shall
10 20 also not recommend or encourage default on an existing loan or
10 21 other debt prior to and in connection with the closing or
10 22 planned closing of a consumer home loan that refinances all or
10 23 any portion of such existing loan or debt; advertise mortgage
10 24 loans, unless the lender, mortgage banker, or mortgage broker
10 25 is able to make the advertised mortgage loans available to a
10 26 reasonable number of qualified applicants; represent to a
10 27 borrower, in connection with the closing or planned closing of
10 28 a consumer home loan, that the lender, mortgage banker, or
10 29 mortgage broker will be able to refinance the loan at a later
10 30 date on more favorable terms unless the lender, mortgage
10 31 banker, or mortgage broker provides the borrower in writing a
10 32 statement that the lender, mortgage banker, or mortgage broker
10 33 is contractually bound to refinance the loan at a later date
10 34 and specifies the terms; misrepresent to a borrower the
10 35 borrower's credit rating or credit status; misrepresent,
11 1 inflate, or fabricate, or encourage a borrower to
11 2 misrepresent, inflate, or fabricate, the source or amount of a
11 3 borrower's actual income or assets in the application or
11 4 underwriting process of a consumer home loan; underwrite or
11 5 close a consumer home loan if any portion of a borrower's
11 6 income or assets used to underwrite or close the loan is not
11 7 verified through documentation and the amount of income
11 8 claimed is not reasonable for the occupation and experience
11 9 claimed; impose any fee upon a borrower in connection with a
11 10 consumer home loan application that fails to close;
11 11 misrepresent or conceal material facts or make false promises
11 12 likely to influence, persuade, or induce a borrower to enter
11 13 into a consumer home loan; fail to disburse funds in
11 14 accordance with a written commitment or agreement to make a
11 15 consumer home loan; engage in any transaction, practice, or
11 16 course of business in connection with a consumer home loan
11 17 that is not in good faith or fair dealing or that constitutes
11 18 a fraud upon any person; or make, provide, or arrange for a
11 19 consumer home loan without verifying the borrower's reasonable
11 20 ability to repay the loan being offered. The bill provides
11 21 for remedies for a borrower who suffers damage or injury as
11 22 the result of the above practices.

11 23 The bill adds new provisions regarding duties of mortgage
11 24 bankers and brokers to Code chapter 535B, which regulates and
11 25 licenses such persons. The bill provides that a mortgage
11 26 banker or broker shall act in good faith and with fair dealing
11 27 in any transaction, practice, or course of business in
11 28 connection with any mortgage loan on residential real

11 29 property; safeguard and account for any money handled for the
11 30 borrower; follow reasonable and lawful instructions from the
11 31 borrower; act with reasonable skill, care, competence, and
11 32 diligence; affirmatively disclose facts, without prompting or
11 33 questions from the borrower, which are or should be within the
11 34 mortgage broker's knowledge which materially affect the
11 35 borrower's rights and interests; make reasonable efforts to
12 1 secure a loan that is reasonably advantageous to the borrower;
12 2 and place the borrower in a loan based on the best interests
12 3 of the borrower and not the best interests of the mortgage
12 4 broker. The bill contains provisions regarding an action if a
12 5 borrower suffers damage or injury if these provisions have
12 6 been violated.
12 7 The bill prohibits the obtaining of a yield spread premium
12 8 in relation to any mortgage loan that includes the payment of
12 9 a discount point or an interest reduction fee, and provides
12 10 that a borrower shall have the right to recover the sum of the
12 11 yield spread premium if the prohibition is violated. The bill
12 12 defines a discount point or interest reduction fee as a fee
12 13 that is paid by a borrower at the closing of a loan to buy
12 14 down or reduce the interest rate on the loan. The bill
12 15 defines a yield spread premium as an interest rate that is
12 16 above the par rate for which the borrower qualified and the
12 17 difference in the interest rate is paid, in whole or in part,
12 18 to any party other than the lender funding the loan. The bill
12 19 defines par rate to mean the interest rate on a loan with zero
12 20 discount points.
12 21 The bill establishes a mortgage lending fraud prosecution
12 22 surcharge and fund. A surcharge in the amount of \$1 shall be
12 23 assessed by the county recorder when a mortgage or deed of
12 24 trust is recorded. The surcharge amounts, less an
12 25 administrative charge, shall be transmitted monthly to the
12 26 treasurer of state, who shall deposit the funds into a
12 27 mortgage lending fraud prosecution fund established for the
12 28 investigation and prosecution of frauds related to mortgage
12 29 lending.
12 30 The bill contains additional conforming changes, and
12 31 several amendments including the bill's provisions within the
12 32 scope of the consumer fraud provisions of Code section 714.16.
12 33 LSB 2528XS 82
12 34 rn:nh/gg/14